

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF OKLAHOMA**

1) SODEXO OPERATIONS, LLC))	
)	
<i>Plaintiff,</i>)	
)	
v.)	Civil Action No. <u>20-cv-228-SPS</u>
)	
1) BACONE COLLEGE)	
)	
<i>Defendant.</i>)	
_____)	

COMPLAINT

Plaintiff SODEXO OPERATIONS, LLC (“Sodexo”), by and through its undersigned attorneys, brings this action against Defendant BACONE COLLEGE (“Bacone”) for breach of contract between them.

Nature of the Action

1. This case arises out of Bacone’s breach of its contractual obligations to pay Sodexo approximately \$1.2 million it owes for campus food and beverage services, financing a new dining hall, and for kitchen and dining equipment. There is no dispute that Bacone owes Sodexo the outstanding amounts due under the parties’ agreement. Bacone’s breach is clear.

2. In this breach-of-contract action, Sodexo seeks to recover in excess of \$162,000, including interest, that Bacone owes for campus dining services provided by Sodexo from approximately August 2018 through April 17, 2019. Sodexo also seeks to recover in excess of \$1,118,000, in reimbursement for investments made by Sodexo in the construction of a new dining hall and for the purchase and installation of kitchen and dining equipment, including a ten-percent asset recovery fee and interest.

Parties

3. Plaintiff Sodexo Operations, LLC, is a Delaware limited liability company with its principal place of business in Montgomery County, Maryland. Its sole member is a Delaware corporation with a principal place of business in Montgomery County, Maryland.

4. Defendant Bacone College is an Oklahoma not-for-profit corporation, located in Muskogee, Oklahoma.

Jurisdiction and Venue

5. This Court has jurisdiction over all causes of action asserted in this Complaint under 28 U.S.C. § 1332 because the matter in controversy exceeds the sum of \$75,000.00, exclusive of interest and costs, and is between citizens of different states.

6. Venue is proper in this Court because a substantial part of the actions, failures, events, and/or omissions giving rise to the claim occurred in this judicial District.

CLAIM FOR RELIEF
(Breach of Contract)

7. On or about August 3, 2017, Sodexo and Bacone entered a written management agreement (the “Management Agreement”) for Sodexo to manage and operate campus food services for Bacone’s students, faculty, staff, employees, visitors and guests. Under the Management Agreement, Sodexo provided resident dining and catering services and a retail program, and made amortized investment contributions to Bacone to be used toward the construction of a new dining hall and the purchase and installation of kitchen and dining equipment.

8. Pursuant to Section 7.3 of the Management Agreement, Sodexo invoiced Bacone for dining and catering services at the end of each week, and payment from Bacone was due within fifteen days of the date of the invoice. Bacone was required to pay interest on any unpaid

amount not paid when due at the lesser of one and one-half percent (1.5%) per month or the highest interest rate allowed by applicable state law.

9. Pursuant to Section 7.5 of the Management Agreement, Sodexo provided Bacone with an investment of \$825,000 for the construction of a new dining hall, and was required to spend up to \$175,000 for the purchase and installation of kitchen and dining equipment (the “Investments”). The Management Agreement required the Investments to be amortized on a straight-line basis. Upon termination, the Management Agreement required Bacone to reimburse Sodexo the unamortized portion of the Investments within five (5) days after receipt of a notice of termination of the Agreement, and to pay to Sodexo an asset recovery fee of ten percent (10%) of the unamortized portion.

10. The initial term of the Management Agreement was thirteen years, commencing on August 1, 2017.

11. Sodexo performed under the Management Agreement.

12. Commencing in or about September 2018, Bacone failed to pay Sodexo for invoices due and owing for dining and catering services.

13. By letter dated March 28, 2019, Sodexo notified Bacone that it had breached the Management Agreement by failing to pay Sodexo amounts due and owing thereunder.

14. Bacone did not pay the outstanding amounts due and owing to Sodexo or otherwise remedy its default under the Management Agreement.

15. By letter dated April 10, 2019, Sodexo terminated the Management Agreement as a result of Bacone’s continuing, uncured default. Sodexo’s final day of operation was April 17, 2019.

16. Pursuant to Sections 3.4 and 7.3 of the Management Agreement, all outstanding amounts, including all accrued and unpaid interest, became immediately due and payable.

17. Pursuant to Section 7.5 of the Management Agreement, the unamortized portion of the Investments, and an asset recovery fee of ten percent of the unamortized portion of the Investments, became due and payable on or about April 15, 2019.

18. Bacone has refused to pay to Sodexo the outstanding amounts due and owing, plus interest as set forth in the Management Agreement, and has refused to reimburse Sodexo the unamortized portion of the Investments, plus the ten-percent asset recovery fee and interest.

19. The Management Agreement between Sodexo and Bacone constituted a written, express contract.

20. Pursuant to the terms of the Management Agreement, Bacone agreed to pay Sodexo for dining and catering services within fifteen days (15) days of the date of the invoice. Bacone also agreed to pay interest of 1.5% per month on the overdue amounts.

21. The Management Agreement required Bacone, upon termination, to immediately pay Sodexo all sums due and payable thereunder.

22. The Management Agreement also required Bacone to reimburse Sodexo for the unamortized portion of the Investments within five (5) days of receipt of any notice of termination. Bacone also agreed to pay an asset recovery fee of ten (10%) of the unamortized portion of the Investments.

23. Bacone received Sodexo's notice of termination on or about April 10, 2019.

24. As of that date, approximately \$129,854.77 in outstanding invoices was due and payable by Bacone to Sodexo. Late fees on the unpaid amounts, which Bacone is required to pay, continue to accrue and total over \$32,198.50 (as of June 2020).

25. The unamortized portion of the Investments, which the Management Agreement also required Bacone to pay as of April 15, 2019, is approximately \$837,238.99, plus a ten-percent (10%) asset recovery fee of approximately \$83,723.90, and interest of approximately \$198,019.64 (as of June 2020).

26. Bacone has failed to pay the amounts identified in Paragraphs 25 and 26 above that are due and owing to Sodexo under the Management Agreement.

27. As a direct and proximate result of Bacone's breach of the Management Agreement, Sodexo has incurred--and will continue to incur through entry of judgment--damages of over \$1,281,035.80, in an exact amount to be proved at trial.

28. In attempting to enforce the terms of the Management Agreement, Sodexo has incurred and will continue to incur considerable attorneys' fees, court costs, and related expenses.

29. Pursuant to Section 9.11 of the Management Agreement, Sodexo, either as the initiating Party in this action against Bacone for failing to make payment when due or as the prevailing party, is entitled to recover reasonable attorneys' fees, collection service expenses, court costs and related expenses.

WHEREFORE, Plaintiff Sodexo Operations, LLC, prays:

- (a) that the Court exercise jurisdiction over this action;
- (b) that the Court award Sodexo compensatory damages in an amount to be proved at trial, plus pre-judgment and post-judgment interest thereon;
- (c) that the Court award Sodexo its reasonable attorneys' fees and costs incurred in preparing, filing, and prosecuting this action; and
- (d) that the Court award Sodexo such further relief as the Court deems just and proper.

Dated: July 6, 2020

Respectfully submitted,

JAMES C. HODGES, PC
A Professional Corporation

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